

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

HELEN GORE

PLAINTIFF,

CASE No. 05-71966

V.

HONORABLE ARTHUR J. TARNOW  
UNITED STATES DISTRICT JUDGE

COMMISSIONER OF SOCIAL SECURITY,

DEFENDANT.

MAGISTRATE JUDGE  
WALLACE CAPEL, JR.

/

**ORDER ADOPTING THE MAGISTRATE'S  
REPORT AND RECOMMENDATION [D/E # 34]**

Before the Court is Magistrate Wallace Capel, Jr.'s August 16, 2006 Report and Recommendation recommending that this Court grant in part and deny in part Plaintiff's Motion for Summary Judgment, deny Defendant's Motion for Summary Judgment, and remand the case to the Administrative Law Judge for a proper record assessment of the Plaintiff's exertional and nonexertional limitations, to accord the appropriate weight to the opinion of Plaintiff's positions, and to determine whether Plaintiff retained the RFC to perform her past relevant work in accordance with the agency's regulations. The Magistrate further recommended that the Court order the Secretary to give this case priority upon remand based on the protracted procedural history of the case.

Defendant filed objections to the Magistrate's Report and Recommendation on August 29, 2006. Defendant objected to the Magistrate's findings that the ALJ improperly rejected the opinions of Plaintiff's treating physicians and that the ALJ failed to consider the combined effects of Plaintiff's non-exertional and exertional impairments.

Defendant's objections merely retrace the arguments presented in previously filed briefs. Thus, the Magistrate's Report and Recommendations both adequately and fully address the objections.

Having reviewed and carefully considered the Magistrate Judge's Report and

Recommendation, the administrative record, Defendant's objections,

**IT IS HEREBY ORDERED** that the Report is accepted and entered as the findings and conclusions of this Court. As a result, the Plaintiff's Motion for Summary Judgment [D/E # 15] is **GRANTED IN PART** and **DENIED IN PART**, Defendant's Motion for Summary Judgment [D/E # 21] is **DENIED**, and the case is **REMANDED** for proceedings consistent with the Magistrate's Report. Given that the ALJ has already heard this case twice and that the case is now being remanded with instructions for a second time, a full and fair hearing on this Court's adopted findings, as well as an evaluation of the present and any new evidence that may be appropriate on remand, would best be assured by having a different ALJ hear the matter on remand.

**IT IS FURTHER ORDERED** that the Secretary give this case priority upon remand based on the protracted procedural history of the case.

s/Arthur J. Tarnow  
Arthur J. Tarnow  
United States District Judge

Dated: September 15, 2006

I hereby certify that a copy of the foregoing document was served upon counsel of record on September 15, 2006, by electronic and/or ordinary mail.

s/Theresa E. Taylor  
Case Manager